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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,232	02/22/2005	Werner Gauweiler	266122US0PCT	7199
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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
			EXAMINER	
			ROGERS, JAMES WILLIAM	
			ART UNIT	PAPER NUMBER
			1618	
			NOTIFICATION DATE	DELIVERY MODE
			06/26/2007	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	Application No. 10/525,232	Applicant(s) GAUWEILER ET AL.	
	Examiner James W. Rogers, Ph.D.	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3, 6 and 8-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

The amendments to the claims filed 05/07/2007 have been entered. Any rejection/objection not addressed from the previous office action dated 02/05/2007 have been withdrawn.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3 and 6-7 with regards to Schade et al. (US 5,962,613) have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments, see Applicant Arguments/Remarks Made in an Amendment, filed 05/07/2007, with respect to the double patenting rejections in view of the new amendments to the claims, have been fully considered and are persuasive. The double patenting rejections of claims 1-3 and 6-7 has been withdrawn.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

These new grounds of rejection were necessitated by applicant's amendments to the claims.

Claim 8 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in

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the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically claim 8 recites the limitation that the monomer (b) is present in the mixture from 0.1 to 10% by weight, the examiner could not find support for this limitation within the specification, only 0.1 to 99%, 10 to 95% and 40 to 90% have support on page 11 lines 16-20.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically the claim recites in part f) that the composition contains a salt at 1 to 100% of the saturation amount of the reaction medium. The above limitation is considered indefinite with respect to the amount of salt in solution because the saturation amount of a salt in solution will vary according to numerous factors such as 1) the type of salt used, 2) The type of solvent and the amount used and 3) the temperature of the solution. It is suggested by the examiner that applicants amend their claim so that the amount of salt corresponds to an amount in weight percent compared to the entire composition that is supported within the specification as originally filed. To expedite the examining process the examiner searched for a broad concentration of salts in cosmetic compositions.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2,8-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Maurin et al. (US 6,403,542), this new ground of rejection was necessitated by applicants amendments to the claims.

Maurin teaches compositions for washing keratin material (especially hair) based on 1) detergent surfactant such as ionic surfactants, 2) 0.005 and 10% by weight of a vinyl lactam cationic polymer comprising at least one cationic group including methylvinylimidazolium salt and 3) 5 to 85% of an acrylic terpolymer. See abstract, examples, col 3 lin 5-23 and claims. The terpolymer could be further crosslinked and comprised a monomer (b) chosen from a heterocyclic vinyl compound containing at least one nitrogen or sulfur atom, a methacrylamide, a mono or di alkylamino alkyl methacrylate or a mono or di alkylamino alkyl methacrylamide. See col 1 lin 48-61 col 2 lin 31-40 and. The monomer component (b) above meets the limitation of claim 1 monomer a). Regarding the limitation in claim 1g) that the composition contains at least one colloid, the examiner used applicants specification [0104] to clarify the limitation of what materials satisfy a colloid and found that quaternary ammonium substituted polymers met the limitation of a colloid, therefore the vinyl lactam cationic copolymers disclosed within Maurin anticipate the colloids of claim 1 part g). Regarding the limitation in claim 1 f) that the composition contains an organic or inorganic salt, Maurin teaches

the use of fatty acid salts as surfactants in amounts between about 5 to 50% by weight of the composition, thus meeting the limitation. See col 4 lin 7-col 5 lin 38. Regarding claims 11 and 12 Maurin teaches the use of numerous crosslinkers including methacrylic esters and acrylic esters in amounts of up to 2%. See col 3 lin 5-23. The compositions of Maurin were disclosed as being useful in shampoo compositions, the shampoos yielded improved cosmetic properties to the hair including greater softness and lightness, greater smoothness, sheen and manageability to dried sensitized hair. See col 1 lin 26-38.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3,6 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schade et al. (US 5,962,613, disclosed in last action) in view of Maurin et al. (US 6,403,542).

Schade discloses water soluble crosslinked copolymers comprising a) 10-89.5% by weight monomers of vinyl imidazoles of formula (I) and monomers of formula (II) including N-vinylcaprolactam and mixtures of said monomers B) 0-89.5% by weight of other copolymerizable monoethylenically unsaturated monomers, including charged quarternized monomers such as vinylimidazole and C) 0.5-30% by weight of at least one monomer which acts as a crosslinker and has at least two non-conjugated ethylenic double bonds, the polymers were recited as being useful in cosmetics. See col 2 lin 22-col 4 lin 65, col 9 lin 13-14 and claims 1-3.

Schade does not disclose the use of a protective colloid nor the use of a salt in the cosmetic formulations contemplated for use.

Maurin is disclosed above. Maurin is used primarily for the disclosure within that it was already well known in the art at the time of the invention to use detergent surfactants such as fatty acid salts and vinyl lactam cationic copolymers (meets colloid)

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in cosmetic compositions. The cosmetic compositions of Maurin were disclosed as being useful for treating hair.

It would have been prime facie obvious to a person of ordinary skill in the art at the time the claimed invention was made to combine the art described in the documents above because both references above pertain to cosmetic compositions containing ionic polymers and one skilled in the art would have a reasonable expectation of success in adding the detergents and vinyl lactam cationic copolymers disclosed within Maurin with the composition disclosed within Schade. The motivation to combine the above documents would be to formulate a cosmetic comprised of copolymers of vinyl-imidazole/ polycaprolactone, detergent surfactant and vinyl lactam cationic copolymers with the advantage that the cationic copolymer and detergent provide improved cosmetic properties. Thus, the claimed invention, taken as a whole was *prima facie* obvious over the combined teachings of the prior art.

### **Conclusion**

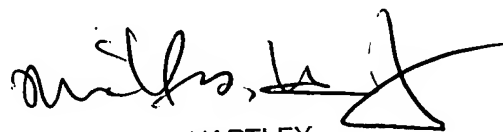
No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers, Ph.D. whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Michael G. Hartley", with a stylized flourish at the end.

MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER